

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1837 OF 2005

Mrs.Nalini Mehra).. Petitioner

Versus

Group Captain H.Kaushal and another .).. Respondents

Mr.G.S.Godbole with Mr.R.S.Datar for the Petitioner.

Mr.J.S.Kini for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 20TH JULY 2005

P.C.:

. The Competent Authority has held that it has no jurisdiction to determine the compensation payable if the premises are handed over to the licensor before filing of the application. The Revisional Authority while coming to the conclusion that the Competent Authority has erred in deciding that it has no jurisdiction, proceeded to decide the application rather than remanding it to the Competent Authority. Exception is taken to this procedure adopted by the Revisional Authority.

2. It cannot be gainsaid that if the Court of first instance wrongly refuses to exercise its jurisdiction, the Revisional Authority should not arrogate to itself the powers of the Court of first instance and decide the

dispute. This would in effect mean that the parties to the dispute would lose a chance to Appeal or file a Revision against the decision of the Competent Authority. The procedure adopted by the Revisional Authority was erroneous. There can be no dispute that the Competent Authority had jurisdiction to determine the compensation payable. This issue is no longer *res integra* in view of the decision in the case of *Fundacio Privada Intervida vs. Additional Commissioner, Pune Division, Pune and another*, 2005 (2) Mh.L.J. 769.

3. In such circumstances, the order of the Revisional Authority is set aside. The Competent Authority will decide the dispute bearing in mind the principles laid down in the decision of this Court in *Fundacio Intervida* (supra) referred to above. The Competent Authority will decide the dispute within three months from today.

4. All contentions raised in the Petition are kept open except the issue regarding jurisdiction of the Competent Authority to decide the amount of compensation.

5. Writ Petition disposed of accordingly.